

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 4, Section 3270
of the General Industry Safety Orders

Safe Access To Elevated Locations**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons.

Summary and Response to Written and Oral Comments:**I. Written Comments**

Ms. Teresa A. Harrison, Acting Regional Administrator, U.S. Department of Labor,
Occupational Safety and Health Administration, Region IX, by letter dated November 8, 2007.

Comment:

Federal OSHA indicated it had reviewed the proposed changes and updates for the requirements for safe access to elevated locations and concluded that the proposed changes provide protection at least, if not more effective, than the federal standard in ensuring safe access to permanent elevated work locations.

Response:

The Board thanks Ms. Harrison and Federal OSHA for their input and for their participation in the rulemaking process.

Mr. Brad Closson, CRAFT Forensic Services, by email dated September 28, 2007.

Comment:

Mr. Closson expressed concern over the feasibility of the proposed language requiring access to every permanent elevated location by fixed ladders or permanent ramps or runways. Mr. Closson provided four examples that he considers problematic: 1) mobile overhead cranes, 2)

crane rails and overhead supports that have to be inspected and adjusted, 3) sides of buildings for painters for which other methods of safe access are better or safer than fixed ladders or permanent ramps or runways, and 4) building windows where glaziers must work.

Mr. Closson concluded that a variety of access solutions should be available for the employer to choose from. He stated that architects, builders, owners and users of equipment may have difficulty predicting the need for the required access for every permanent work location and that portable equipment which is permitted in subsection (b) as a means of access should be available as an option in subsection (a).

Response:

Access to mobile overhead crane cabs are addressed by General Industry Safety Order Section 4887 which requires that access to the cage, cab or machine house be afforded by a fixed ladder, stairs or platform. This vertical requirement takes precedence over Section 3270(a), which is a general or horizontal requirement. With regard to crane rails and overhead supports, Section 4887(d) addresses the need for workers to access various parts of the crane to service or adjust equipment. The sides of buildings that are painted are not permanent work locations. According to the scope of the Construction Safety Orders (CSO), painting is an activity that is covered under the fall protection and access requirements of the CSO, not Section 3270(a). Access to work performed by glaziers (window installers, installation or repair activity) is covered by the access and fall protection requirements of CSO Section 1502(a) as a construction activity. In addition, Articles 5 and 6 of the General Industry Safety Orders specifically apply to window cleaning and exterior building maintenance activities and take precedence over the general access requirements of Section 3270.

With respect to Mr. Closson's closing comments, the Board agrees that architects, designers and planners should anticipate the need to design safe access to permanent elevated locations during the building design phase. This is the most cost effective time to lay out plans for a safe platform or runway to provide safe access to elevated locations. Subsection (b) does not specifically mention portable equipment; it requires a platform or maintenance runway which can be the platform of portable ladders or an aerial device, and subsection (b) as amended would not preclude their use to provide access to a permanent elevated location.

The Board believes no modification of the proposal is necessary. The Board thanks Mr. Closson for his comments and participation in the Board's rulemaking process.

Mr. Donald R. Cunningham, PE, CSP, DC Safety Management Services, LLC, by letter dated October 30, 2007.

Comment:

Mr. Cunningham opined that Section 3212(d)(1) addresses the issue of roof cleaning and that when the permanent elevated location is on a structure other than a roof, Section 3210(b) would apply. In addition, Mr. Cunningham stated that applying the proposal to every permanent

elevated location such as tops of tanks, motors on elevated conveyors and roof gutters, would have adverse cost impact upon business. He stated that portable equipment and/or personal fall protection can provide adequate safety.

Response:

Section 3212(d)(1) applies to work performed on existing roofs (roofs that are not under construction) such as roof cleaning, repair, cleaning or replacement of skylights and other work on roofs that may or may not involve the roof, such as maintenance of rooftop equipment. However, it does not address access. The roof operations addressed by Section 3212 are not the type of work that would require designed-in access to reach a fixed location where employees are stationed or where work is routinely performed in the same location. Roof work can take place randomly at various frequencies and at various locations on the roof; therefore, permanent ramps, fixed ladders or stairways would be impractical. In this case, portable equipment and personal fall protection would be the most effective method of preventing falls.

With regard to Mr. Cunningham's comment pertaining to cost impact, existing access requirements for permanent structures such as the tops of storage tanks require the installation of fixed ladders. The motors of elevated conveyors would not be considered a permanent work location, but a location requiring periodic access that is reached by portable equipment. Elevator conveyor motors are not normally a location where an employee would be stationed to perform work. Roof gutters, although part of a permanent roof system, are readily accessible by means of portable equipment, such as ground supported ladders or aerial devices or from the roof and provide a safe platform from which to work meeting the platform requirement in Section 3270(b).

The Board believes modification of the proposal is unnecessary. The Board thanks Mr. Cunningham for his comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the November 15, 2007, Public Hearing in Glendale, California.

Ms. Bo Bradley, Director of Safety, Health, and Regulatory Services, representing the Associated General Contractors of California.

Comment:

Ms. Bradley requested further clarification to ensure the employer understands that the standard only applies after the certificate of occupancy has been issued and that the proposal does not apply to temporary structures during construction.

Response:

The proposal amends Section 3270 of the General Industry Safety Orders which applies to all places of employment in California as defined by Labor Code Section 6303, except when the Board has adopted standards for special industries, occupations or employments exclusively in which case those safety orders take precedence. The Board believes no further clarification is required because the various vertical access requirements contained in the Construction Safety Orders, take precedence over the general industry access requirements of Section 3270. Section 3270 clearly applies to safe access to permanent locations, not locations under construction.

The Board believes modification of the proposal is unnecessary. The Board thanks Ms. Bradley for her comment and participation in the Board's rulemaking process.

Kevin Bland, representing the Construction Framers Association and the Roofing Contractor's Association.

Comment:

Mr. Bland stated he agreed with Ms. Bradley's comment.

Response:

See the response to Ms. Bradley's comment. The Board thanks Mr. Bland for his participation in the Board's rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.